

U.S. Application Serial No. 09/988,291
Attorney Docket No. 47004.000180

REMARKS

Claims 59-61, 63-75, 77-87, 89-97, and 99-131 are pending in the application. By this Amendment, claims 119-131 are added. Reconsideration and allowance in view of the foregoing amendments and following remarks are respectfully requested.

No new matter has been added by this amendment. Support for the amendments to the claims may be found in Fig. 2, Fig. 6, and the specification on page 11, line 21 to page 14, line 18, for example.

An Information Disclosure Statement (IDS) with PTO-1449 was filed on November 26, 2003. However, no initialed copy appears to have been forwarded to Applicant. Applicant requests an initialed copy of such PTO-1449 showing consideration by the Examiner.

I. The Examiner Interview of June 30, 2004

Applicant appreciates the courtesies extended to Applicant's Representative, James Miner, in the June 30, 2004 telephone Interview (the "Interview") with Examiner Akers. In the Interview various aspects of the pending rejection were discussed, including Applicant's various grounds of traversal of the pending rejection. In particular, as further addressed below, Applicant's various grounds of traversal as set forth in the March 25, 2004 Amendment were discussed.

Applicant indicated in the Interview that in the May 10, 2004 Office Action, all of Applicant's arguments as set forth in the March 25, 2004 Amendment were not addressed. These various grounds of traversal are set forth again below. That is, in response to Applicant's request in the Interview for Examiner Akers to respond to the arguments set forth in the March 25, 2004 Amendment, Examiner Akers indicated that Applicant should point out the deficiencies

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of the May 10, 2004 Office Action (and which arguments were not addressed). These and other deficiencies of the Office Action are discussed below.

II. General Aspects of the May 10, 2004 Rejection

In the June 30, 2004 Interview, Applicant's representative traversed the pending rejection on various grounds. For example, on page 5, line 9 - page 6, line 5, the Office Action (1) describes various teachings of the applied art and (2) further asserts that "collectively combining these point of purchase sales and classifying them by merchant defines Applicant's element." Applicant submits that such assertions, as well as other assertions set forth in the Office Action, fail to provide a proper basis upon which to reject the claims. Specifically, it is fully unclear in what manner the four pieces of art are being combined, so as to allegedly teach the claimed invention. Rather, the Office Action simply asserts that the art is collectively combined (page 6, lines 4-5 of the Office Action). Applicant respectfully submits that such conclusory combining of the applied art clearly falls short of fairly rejecting all the pending claims.

Relatedly, the rejection on page 4, line 16 - page 5, line 4, asserts, for example, that it would have been obvious to one skilled in the art at the time of the invention to combine Deaton in view of Kramer to teach "part of the disclosure." This assertion is also unclear as to the manner in which the applied art allegedly teaches the "claimed" invention. Rather, it appears that the Office Action is abstractly pooling the teachings of the applied art to somehow allegedly teach the claimed invention. Applicant respectfully submits that such rejection fails to set forth a supportable grounds of rejection and fails to satisfy the requirements of *Graham v. John Deere*, as is further discussed below.

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In summary, Applicant submits that even if the applied art were somehow combined, the art would not teach or suggest Applicant's claimed invention. Further, the Office Action is fully unclear as to how the applied art even allegedly teaches or suggests the claimed invention.

Further, as a matter of note, the Office Action on page 5, line 10, indicates that Applicant's "sole argument" is that the references do not disclose the element of receiving and organizing merchant-level customer purchase information. This assertion is respectfully traversed in that Applicant clearly sets forth various grounds of traversal, as discussed below.

In the Interview, Examiner Akers indicated that he would reconsider the supportability of the pending rejection and the four references applied therein. Further, Examiner Akers indicated that in response to Applicant's further response, the Examiner would clarify and delineate the manner in which any applied rejection was asserted to teach the independent and dependent claims. The Examiner is thanked for his continued consideration of this application.

III. Applicant Requests Examiner's Response to Arguments

In the discussion below, Applicant sets forth various grounds of traversal of the present rejection under 35 U.S.C. §103. Applicant respectfully requests the Examiner address each and every grounds of traversal as set forth below under M.P.E.P. 707.07(f).

M.P.E.P. 707.07(f) indicates that where the Applicant traverses any rejection, the Examiner should, if he repeats the rejection, take note of the Applicant's argument and answer the substance of it. Applicant asserts that the grounds of traversal as set forth in the March 25, 2004 Amendment were not reasonably addressed in the May 10, 2004 Office Action.

IV. The Claims Define Patentable Subject Matter

Claims 59-61, 63-75, 77-87, 89-97, and 99-118 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,424,949 to Deaton *et al.* ("Deaton") in view

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of U.S. Patent No. 6,327,574 to Kramer *et al.* ("Kramer"), U.S. Patent No. 6,298,348 to Eldering ("Eldering") and U.S. Patent No. 6,377,936 to Henrick *et al.* ("Henrick").

The Office Action has rejected the claims as allegedly being unpatentable in view of Deaton, Kramer, Eldering and Henrick. Applicant respectfully asserts that the claims are patentable over the combined references, as the proposed combination is improper; as it renders the references unsatisfactory for their intended use; and since the proposed combination fails to disclose every element of the invention and thus fails to set forth a *prima facie* case on obviousness. Further deficiencies of the applied art are discussed below.

A. The Rejection is Improper

As set forth in M.P.E.P 706.02(j), 35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. M.P.E.P 706.02(j) indicates that after indicating that the rejection is under 35 U.S.C. 103, the Examiner should set forth in the Office Action:

(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,

(B) the difference or differences in the claim over the applied reference(s),

(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and

(D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

M.P.E.P 706.02(j) references the well known requirements of *Graham v. John Deere*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). Further, M.P.E.P 706.02(j) notes that it is important for an

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Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply.

Applicant notes that the Office Action does set forth an alleged motivation to combine the applied art. However, Applicant respectfully submits that the May 10, 2004 Office Action is deficient with regard to both requirements (B) and (C) above. That is, the May 10, 2004 Office Action fails to set forth the differences in the claimed invention vis-à-vis the applied art. For example, the Office Action fails to assert the differences in the claims over the teachings of the primary reference to Deaton. Applicant further respectfully notes that the May 10, 2004 Office Action does not set forth the proposed modification of the applied references necessary to arrive at the claimed subject matter, i.e., in what manner is Deaton being modified by the other applied art.

In particular, the Office Action does not assert the manner in which Deaton is being modified to allegedly arrive at the claimed invention. Rather, Applicant respectfully submits that the Office Action lists the alleged teaching of the art, provides a motivation to combine, and then asserts that it would have been obvious to combine so as to "teach the disclosure" or "teach part of the disclosure." However, the Office Action fails to discuss, in any reasonable manner, the proposed modification of the applied art necessary to arrive at the claimed subject matter, as required under M.P.E.P 706.02(j).

Further, since the Office Action fails to set forth the manner in which the art is allegedly combined, Applicant respectfully submits that it is impossible to ascertain whether the motivations for combination, as set forth in the Office Action, are proper. That is, the motivation to combine is of course linked to what features are being combined. Proper motivation may or may not exist depending on what is being modified and the manner in which it is modified.

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As noted above, M.P.E.P 706.02(j) notes that it is important for an Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply. Applicant submits that, based on the above, the basis of the asserted rejection has not been properly communicated, so as to allow Applicant to understand the basis of the rejection and to respond to the rejection. This is especially true since the proposed combination of "four" references adds to the complexity of the present rejection.

Applicant requests the Examiner to clarify the grounds of rejection such that Applicant and the Examiner can work together effectively and productively to further prosecution on this case. Alternatively, Applicant requests that the rejection under 35 U.S.C. §103 be withdrawn.

B. The Combination Is Improper as It Renders the References Unsatisfactory

This ground of traversal was set forth in Applicant's prior response filed November 3, 2003, as well as Applicant's response of March 25, 2004. However, the May 10, 2004 Office Action, as well as previous Office Actions, do not appear to address the ground of traversal in any manner. The Examiner is respectfully requested to consider the remarks set forth herein relating to the manner in which the applied rejection would render the references unsatisfactory.

To explain, the Office Action asserts that the combination of Kramer, Deaton, Henrick and Eldering disclose the claimed invention. The Office Action states that the motivation to combine Kramer and Deaton "is to teach a system that permits the analysis of historical consumer purchasing behavior." The Office Action also states that the motivation to combine Eldering with Deaton and Kramer "is to teach a system that permits the profiling of consumers to determine the appropriate advertisements for consumers." The Office Action further asserts that the motivation to combine Deaton, Kramer, Eldering and Henrick "is to teach a system that enables merchandisers and providers of market products to consumers over a network."

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However, as asserted in the November 3, 2003 Amendment, these motivations ignore the fact that key aspects of Kramer and Henrick would be rendered unsatisfactory by the proposed combination. "If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." M.P.E.P § 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984)).

A key feature of Kramer is the privacy afforded to users of the invention. Kramer specifically teaches that "because of the nature and level of detail of the information available in the TIC model, the user of TIC will require a high degree of privacy. The privacy that TIC provides is that no information collected, generated or inferred by TIC ever leaves the user's control. The data and inferences are used entirely on the users computer for the purpose of customizing and personalizing content for the user. With respect to TIC, personal information about the user only flows from external sources into the user computer (and the locally-controlled storage device). The user may use information presented by TIC to communicate back to content providers but that is done explicitly by the user independently of TIC." Col. 5, line 62 through col. 6, line 7.

Thus, one of the key features of Kramer is the privacy afforded to an individual user. The very title of Kramer recites "Hierarchical Models of Consumer Attributes for Targeting Content in a "Privacy-Preserving Manner". These privacy concerns stand in contrast to the disclosures of Deaton and Eldering, and the manner that such art handles privacy concerns. That is, Deaton and Eldering appear to maintain customer information at a location outside of the control of the customer. Thus, combining Kramer with either Deaton and Eldering would render Kramer unsatisfactory for its intended purpose.

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To explain further, Eldering does indeed address privacy, but appears to handle privacy in a different manner. For example, Eldering describes in the Abstract that an advantage of the Eldering system is the ability to maintain the privacy of the information while still allowing it to be accessed to match advertisements and offers to consumers. In column 1, line 65, Eldering teaches that privacy concerns are an important factor in using consumer purchase information; and that consumers will generally find it desirable that advertisements and other information is matched with their interests, but will not allow indiscriminate access to their demographic profile and purchase records. Further, in column 12, line 2, Eldering describes that in a preferred embodiment individual measurements of the correlations, or projections of the ad characteristics vector on the consumer basis vectors, are not made available to protect consumer privacy, and only the absolute sum is reported.

However, Eldering teaches in column 6, lines 9-16, that profiler 140 may be a retailer who collects data from its stores, but can also be a third party who contracts with consumer 100 and the retailer to receive point of purchase data and to profile the consumer 100. Eldering describes that *Consumer 100 may agree to such an arrangement* based on the increased convenience offered by targeted ads, or through a compensation arrangement in which they are paid on a periodic basis for revealing their specific purchase records.

Further, Henrick is directed toward data mining based on web-site usage, as described in the Abstract. Henrick also specifically notes that preserving consumer privacy is of specific concern (Abstract). Offers are made over the internet and market intelligence and customer profiles are based on internet usage. Col. 4, lines 25-32. The Henrick invention takes advantage of the unique customer knowledge of an Internet Service Provider (ISP) with respect to both the customers identity and their likes and dislikes, while preserving the privacy of those customers.

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As with Kramer above, these privacy concerns of Henrick stand in contrast to the manner in which Deaton and Eldering handle privacy concerns. Thus, combining Henrick with either Deaton and Eldering would render the art unsatisfactory for its intended purpose. Further, the differences in privacy concerns between the applied art would not lead one of ordinary skill in the art to somehow combine the teachings of the references, as attempted in the Office Action.

Applicant respectfully submits that the Office Action ignores this deficiency in the proposed combination and fails to even attempt to address it. Applicant respectfully submits that this failure to properly follow the M.P.E.P and the case law demonstrates the improper nature of the combination and of the rejection as a whole.

The May 10, 2004 and November 25, 2003 Office Actions fail to address Applicant's above argument in any reasonable manner. The Office Action does indeed provide a section "Response to Arguments." However, as to the above arguments, such portion of the Office Action fails to make any mention of the "privacy" teachings as discussed above. Further, the November 25, 2003 Office Action fails to address Applicant's assertion that key aspects of Kramer and Henrick would be rendered unsatisfactory by the proposed combination. This further failure to properly follow the M.P.E.P also demonstrates the improper nature of the applied rejection under 35 U.S.C. §103.

C. The Combination Does Not Disclose Every Element of the Claims

As also argued in the March 25, 2003 Amendment, as the combination of Kramer and Henrick with Deaton and Eldering is clearly not proper or appropriate, the resulting combination of Deaton and Eldering does not disclose every element of the claimed invention.

The claims of the present invention are directed toward gathering and manipulating merchant level customer purchase information, i.e., meaning that the claimed invention is not

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concerned with individual products purchased by a particular customer, but rather the claimed invention concerns the merchants at which the customer makes a purchase. The combination of Deaton, Eldering, Henrick and Kramer, even if proper, does not disclose this feature of the claims. Specifically, claim 59, for example, recites "receiving the merchant level customer purchase information" and "organizing the merchant level customer purchase information." Thus, the present invention is not concerned with individual products purchased, but the merchants at which a customer makes a purchase. For example, as can be seen, Fig. 6 does not show the particular item purchased, e.g., a watch. That is, "merchant level customer purchase information" is directed to the merchant level. Fig. 6 of the present application, for example, pertains to information from different merchants relating to the same customer, in accordance with one embodiment of the invention.

Deaton fails to teach the features of claim 59. Further, the deficiencies of Deaton are not cured by the other applied art. In the Abstract, Deaton teaches a system and method is disclosed for customer promotion. A terminal enters a customer's identification code, along with customer transaction data, at the point-of-sale. A memory stores a database of previously entered customer identification codes and transactions data. Circuitry is provided for generating a signal representative of a customer's shopping history, wherein incentive coupons may be issued to customers in dependence upon the signal.

Further, the disclosure of Deaton is, for example, directed toward a system for a merchant to identify risks with respect to accepting checks from a customer. Col. 4, lines 52-61. Further, one feature of the system of Deaton is to target a customer at a retailer based on past purchases at that retailer. Col. 7, lines 31-50. There does not appear to be disclosure regarding use of the Deaton system by more than one retailer, such as competing retailers, at the same time, or

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generating a customer profile based on the purchases at a number of different merchants so as to teach the features of claim 59.

To explain further, claim 59, in summary, recites a method for making targeting offers comprising receiving the merchant level customer purchase information; organizing the merchant level customer purchase information within a predetermined organizational structure, creating a customer preference based at least in part on the merchant level customer purchase information; and forming a merchant level offer for a customer based on at least one of the customer preference and the merchant level customer purchase information.

Deaton, as well as the other applied art, fails to teach such specifics including manipulation of merchant level information, from a plurality of merchants. Deaton does indeed discuss multiple store configuration, such as in column 6, lines 24-35, and column 21, lines 6-50. In particular, Deaton teaches that the stores exchange information for purposes of check verification, for example. However, Deaton fails to disclose the specifics of claim 59.

With regard to Eldering, Eldering describes using actual product information, price and identification in creating a customer profile, as shown in Fig. 5. The invention described in Eldering is directed toward determining the individual products that a customer purchases. As set forth in Eldering, a "[p]rofiler 140 may be a retailer who collects data from its stores, but can also be a third party who contracts with consumer 100 and the retailer to receive point of purchase data and profile the consumer 100." Col. 6, lines 1-12.

The May 10, 2004 Office Action asserts that Eldering discloses a consumer profiling system to learn about customers' preferences (Abstract) are formed based on purchases made; and that the purchase records are formed and sent to the profiling system by merchants (Abstract). The Office Action further asserts that using a relational database product category

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and demographics are correlated (Fig 6B); and that it is clear that a relational database may also be used to determine merchants that sent the information to the profiling system. The Office Action asserts that Eldering indeed receives point of purchase information from such merchants (Fig 8A/800)(col 12 lines 32-36). The Office Action further asserts that Eldering teaches receiving merchant level customer purchase information(Fig 8A/800) from every merchant; and that collectively combining these point of purchase sales and classifying them by merchant defines applicant's element. These assertions as set forth in the Office Action are respectfully traversed.

In column 2, lines 33-41, Eldering teaches that the Eldering invention supports the receipt of consumer purchase information with which consumer characterization vectors are updated based on product characterization information. The consumer characterization vectors include a consumer demographic vector which provides a probabilistic measure of the demographics of the consumer, and a product preference vector which describes which products the consumer has typically purchased in the past, and therefore is likely to purchase in the future. The product characterization information includes vector information which represents probabilistic determinations of the demographics of purchasers of an item, heuristic rules which can be applied to probabilistically describe the demographics of the consumer based on that purchase, and a vector representation of the purchase itself.

Further, Eldering in column 7, lines 20-45, teaches that FIG. 2C illustrates a product preference vector. The product preference represents the average of the consumer preferences over past purchases. As an example, a consumer who buys the breakfast cereal manufactured by Post under the trademark ALPHABITS about twice as often as purchasing the breakfast cereal manufactured by Kellogg under the trademark CORN FLAKES, but who never purchases

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breakfast cereal manufactured by General Mills under the trademark WHEATIES, would have a product preference characterization such as that illustrated in FIG. 2C. As shown in FIG. 2C, the preferred size of the consumer purchase of a particular product type can also be represented in the product preference vector. Eldering further describes that Fig. 2D represents a data structure for storing the consumer profile, which can be comprised of a consumer ID field 237, a deterministic demographic data field 239, a probabilistic demographic data field 241, and one or more product preference data fields 243. As shown in FIG. 2D, the product preference data field 243 can be comprised of multiple fields arranged by product categories 253. Eldering further teaches that depending on the data structure used to store the information contained in the vector, vectors may be in the form of a table, record, linked tables in a relational database, series of records, or a software object.

Further, in column 9, lines 41-50, Eldering teaches that consumer profiling system 500 receives purchase information from a point of purchase, as represented by point of purchase records 510. The information contained within the point of purchase records 510 includes a consumer ID 512, a product ID 514 of the purchased product, the quantity 516 purchased and the price 518 of the product. In a preferred embodiment, the date and time of purchase 520 are transmitted by point of purchase records 510 to consumer profiling system 500. Further, in column 10, lines 42-54, Eldering describes that the updating process as illustrated by the pseudocode in FIG. 6A utilizes a weighting factor which determines the importance of that product purchase with respect to all of the products purchased in a particular product category. In a preferred embodiment the weight is computed as the ratio of the total of products with a particular product ID 514 purchased at that time, to the product total purchase, which is the total quantity of the product identified by its product ID 514 purchased by consumer 100 identified by

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its consumer ID 512, purchased over an extended period of time. Eldering teaches that in a preferred embodiment the extended period of time is one year.

However, Eldering fails to teach the features of claim 59, including receiving the merchant level customer purchase information; organizing the merchant level customer purchase information within a predetermined organizational structure, wherein the predetermined organizational structure comprises a plurality of categories, each category comprising a plurality of sub-categories arranged in a hierarchy having a top-down taxonomy; creating a customer preference based at least in part on the merchant level customer purchase information; and forming a merchant level offer for a customer based on at least one of the customer preference and the merchant level customer purchase information.

That is, Eldering indeed teaches the manipulation of point of purchase information, but fails to teach the manipulation of merchant level customer purchase information, as recited in claim 59. As discussed above, the present claimed invention is not concerned with individual products purchased by a particular customer (i.e., as is Eldering), but rather the claimed invention concerns the merchants at which the customer makes a purchase.

Henrick, even if it were included, is directed toward data mining based on web-site usage, as discussed in the Abstract of Henrick. Offers are made over the internet and market intelligence and customer profiles are based on internet usage. Col. 4, lines 25-32. There is no disclosure in Henrick of any type of merchant level customer purchase information and the manipulation of such as recited in claim 59.

The Office Action asserts that Henrick teaches that the merchant (ISP) has a unique knowledge of a customer's preferences (Abstract); and that information is gathered on customers as to the sites visited to classify the customers (Disney site) and the information is used to

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categorize customers for business marketing (Abstract). The Office Action further asserts that the server creates a list of customers that have a common interest. However, Applicant respectfully submits that even if such is so, regarding the teachings of Henrick, such teaching still does not disclose the specifics of claim 59 relating to the manipulation of merchant level customer purchase information. Such teachings as alleged in the Office Action appear to be no more than well known techniques for target marketing.

Further, Kramer is not directed to multiple merchants, so as to teach the claimed invention. Kramer describes that the Kramer invention relates to the creation and maintenance of models of consumers, based upon transactional data extracted from structured information received via electronic channels and viewed by the consumer, and the use of those models to aid in presenting targeted content, such as advertising or special offers, in a way that does not compromise the consumer's privacy, as described in column 1. Further, for example, Kramer teaches the described system overcomes the limitations of conventional models and targeting methods for delivering custom content to consumers that matches their interests, preferences, demographics, or psychographics (column 2, line 50). Existing systems make use of data warehouses that aggregate information from a variety of sources, create demographic segments with associated consumer preferences, decide which segment or segments a consumer occupies, and sends information relevant to that segment to the consumer.

As described in column 2, lines 46-67, Kramer builds upon the analyzing or "interpreting" of structured documents delivered electronically to the consumer for information to create a consumer profile of the consumer based on a broad spectrum of both online and offline behaviors and transactions. In particular, a detailed model of the consumer is built using mathematical functions that map from the specific transactions of the consumer to estimates of

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the relevancy of certain attributes to the consumer. These models can be used to order a number of pieces of conditional content with respect to how well they match the attributes of the consumer, and hence how well they may appeal to the consumer's interests, preferences, psychographics, or demographics.

As discussed in the Interview with Examiner Akers, Kramer sets forth a structured document in Fig. 2. Specifically, Kramer describes in column 6, lines 8-21, referring to Fig. 2, there is shown a pictorial example of an example structured document, a credit card statement 200, and the types of information that may be usefully extracted during interpretation in order to update a consumer profile. Kramer teaches that for a structured document such as a credit card report, interpretation extracts information about each transaction 202, such as the date/time 204 of the transaction, the entity 206 with whom the transaction occurred, the location 206 of the transaction, and the amount of resources 210 (here measured in dollars) committed by the consumer to the transaction. Kramer further describes that the extracted information here can be used to both update the consumer model and to add new facts about the consumer's transactions, preferences, or interests to the database. However, it is submitted that such information as shown in Fig. 2 of Kramer is not the claimed "merchant level customer purchase information," i.e., such as shown in Figs. 2 and 6 of the present application (not to mention the various particulars of claim 59, for example). Rather, Kramer teaches the well known use of information at the consumer level.

It is respectfully submitted that the applied art fails to teach or suggest creating a customer preference based at least in part on the merchant level customer purchase information, as recited in claim 59.

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Applicant respectfully submits that claim 59 defines patentable subject matter for the reasons as set forth above. Further, independent claims 73, 87 and 97, as well as added claim 130, define patentable subject matter for reasons similar to those set forth above with respect to claim 59.

D. The Dependent Claims

Applicant submits that the dependent claims define patentable subject matter for the reasons set forth above with regard to the independent claims, from which they variously depend, as well as the additional features set forth in each of the dependent claims.

For example, dependent claim 107 recites wherein the step of generating a customer score, includes generating multiple customer scores for a single customer, the multiple customer scores for the single customer each being respectively associated with a different merchant. Accordingly, such claim recites specifics of using data from a number of merchants, in contrast to the teachings of the applied art as discussed above. Claims 108 and 109 similarly relate to purchases from different merchants.

Also, claims 110 and 111 specify that the plurality of sources are different merchants. As discussed above, the applied art fails to teach such feature in the context of claim 59, for example.

Further, claim 112 recites wherein at least a plurality of the categories or sub-categories are associated with a respective count value, each count value indicating the number of customers that have had activity within the particular category or sub-category. Further, claim 113 (and claim 116) recites wherein at least a plurality of the categories or sub-categories are associated with a respective percentage value, each percentage value indicating the percentage of customers that have had activity within the particular category or sub-category. Accordingly,

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claims 112 and 113 reflect the features of Fig. 2 of the present invention and reflect the "merchant level" nature of the invention.

Also, variously dependent claims 114, 115, and 117 further recite the interrelationship of the claimed invention with a plurality of different merchants. As discussed above, the applied art does not teach such features relating to different merchants.

Further, claim 118 recites wherein the categories and sub-categories relate to the volume of purchases made at a particular merchant and not to any particular item purchased at a particular merchant. These feature of the invention may be seen, for example, in Fig. 2. Fig. 2 does not reflect that a watch has been purchased, for example. Rather, Fig. 2 reflects counts and percentage values at different merchants.

Also, Applicant notes in particular claim 68. Claim 68 recites the feature of *updating* the organizational structure when customer purchase information reaches a threshold level. Deaton does not appear to disclose any such feature. Further, the Office Action does not appear to acknowledge this claimed feature that is also reflective of acquiring data at merchant level.

With regard to claim 68, Deaton does disclose in column 6, lines 3-11, that in addition to, or in place of, check verification status data, the local customer database may include credit or debit card data and transactional data such as transaction frequency and dollar volume over specified intervals; and that this transactional data can be used to place conditions risk management on transaction verification over and above verification status. Deaton teaches that for example, in the case of a customer with either CAUTION or POSITIVE status, if a transaction exceeds certain specified transaction limits frequency and/or dollar amount over a specified interval (such as day, week or total), a CALL MANAGER response is returned in response to a verification request, regardless of customer status. However, this teaching of

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Deaton is different than the particular use of a threshold as recited in claim 68. That is, claim 68 does not of course just generally recite use of a threshold. Rather, claim 68 recites use of a threshold as a trigger of sorts to update the organizational structure.

Further, new claims 119-131 are added to capture further novel aspects of the invention. The added claims reflect the discussion with Examiner Akers in the Interview of June 30. In particular, the added claims reflect novel aspects of manipulation of scores, count values, percentage values, categories, and subcategories, for example.

E. The 35 U.S.C. §103 Rejection is Improper

For the reasons described above, the combination of Deaton, Eldering, Henrick and Kramer is improper. The references cannot be properly combined and fail to disclose every element of the claims, and thus fail to establish a *prima facie* case of obviousness. Withdrawal of the rejection is requested.

V. Conclusion

Applicant respectfully submits that this application is in condition for allowance, and reconsideration and allowance of the application is respectfully requested. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's counsel, in person or over the telephone, we would welcome the opportunity to do so.

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It is believed that no fees are due with this response in excess of those otherwise provided for. However, in the event any other fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,
HUNTON & WILLIAMS

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